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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Computer III Remand Proceedings:)	CC Docket No. 90-623
Bell Operating Company Safeguards)	
and Tier 1 Local Exchange Company)	
Safeguards)	
)	
Application of Open Network)	CC Docket No. 92-256
Architecture and Nondiscrimination)	
Safeguards to GTE Corporation)	

GTE's REPLY COMMENTS

GTE Service Corporation and its affiliated
domestic telephone operating companies

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TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	ii
BACKGROUND	1
DISCUSSION	2
I. AS STRESSED BY AMERITECH, EVEN THE PRESENT CPNI RULES IMPOSE UNNECESSARY COSTS AND BURDENS ON EXCHANGE CARRIERS	2
II. PRIVACY CONCERNS DO NOT JUSTIFY CHANGES IN THE CPNI RULES	2
1. CPNI restrictions are ineffective protectors of privacy because they are limited to exchange carriers, while many service providers having as much or more access to confidential customer data represent a more serious risk.....	3
2. Protection of privacy is at best an incidental purpose of the CPNI rules.....	8
III. THERE IS NO JUSTIFICATION FOR DISRUPTING AN EXCHANGE CARRIER's RELATIONSHIP WITH ITS CUSTOMERS.....	9
IV. THE CPNI RULES SHOULD NOT BE EXTENDED TO CPE	13

SUMMARY

1. Changes in the CPNI rules are not justified by privacy concerns.
2. The Commission should reject arguments for restrictions that would disrupt an exchange carrier's relationship with its customers.
3. The Commission should once again reject the demands of CPE vendors for increased restraints on exchange carriers.

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GTE's REPLY COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"), in response to the Public Notice FCC 94-63 (released March 10, 1994), 1994 FCC LEXIS 1011 (the "Notice"), and various comments filed with reference thereto, submit the following Reply Comments concerning the application of Customer Proprietary Network Information ("CPNI") rules to Local Exchange Carriers ("LECs" or "exchange carriers").

BACKGROUND

The Notice seeks comment on "customers' CPNI-related privacy expectations, and whether any changes in our rules are required to achieve the best balance between customers' privacy interests, competitive equity, and efficiency."

In light of the fact that certain local telephone companies have in recent months "planned and entered into a number of alliances, acquisitions and mergers with non-telephone company partners," the Notice asks whether "access to CPNI among

affiliated companies may raise additional privacy concerns." Further, the Notice asks "whether the existing CPNI safeguards will continue in the future to strike the best balance between customers' privacy interests, competitive equity, and efficiency." Specifically, the Notice asks for comment on the CPNI-related privacy expectations of residential and small business customers, and on whether CPNI rules should apply to the provision of Customer Premises Equipment ("CPE").

DISCUSSION

I. AS STRESSED BY AMERITECH, EVEN THE PRESENT CPNI RULES IMPOSE UNNECESSARY COSTS AND BURDENS ON EXCHANGE CARRIERS.

GTE will not reiterate its extensive arguments in CC Docket No. 92-256 ("D.92-256") maintaining application of the CPNI rules to GTE would be costly and unnecessary. See GTE's Comments dated February 22, 1993 and Reply Comments dated March 24, 1993. Any further GTE address to these matters will be in the context of the Commission's Report and Order.¹

GTE only points out the Comments of Ameritech (at 4-11) stressing the heavy costs and burdens of complying with even the present CPNI requirements. Any increase in these costs and burdens -- as urged by various parties discussed infra -- would create still more in the way of unnecessary and unjustified costs and burdens.

II. PRIVACY CONCERNS DO NOT JUSTIFY CHANGES IN THE CPNI RULES.

In GTE's view, the CPNI rules by their nature are an ill-suited vehicle for the protection of customer privacy for the following reasons.

¹ D.92-256 Report and Order, FCC 94-58 (released April 4, 1994).

- 1. CPNI restrictions are ineffective protectors of privacy because they are limited to exchange carriers, while many service providers having as much or more access to confidential customer data represent a more serious risk.**

The application of CPNI rules only to exchange carriers means that, in terms of protecting privacy, the rules are ineffective. This is because the CPNI rules leave unrestricted other service providers that have the same or better access to confidential customer information and that may represent a higher level of risk of abusive behavior. Heaping up more and more protection where the risk is low while leaving unprotected the zones of highest risk is analogous to bolting and barricading one door while leaving another door wide open. Any approach to privacy protection that controls only exchange carriers is by its nature ineffective.

The highest risk of abusive behavior arises where no durable customer relationship exists. Where customer and service provider are just ships that pass in the night -- so the service provider is focused on one transaction at a time and has very little perceived stake in the good will and return business of the customer -- experience teaches that the risk is highest of the service provider taking unfair advantage of its customer. The provider's taking advantage may assume the form of deception, violating privacy, or other abusive behavior.

In a nutshell, the rip-off artist is not concerned about customer good will; the sharp operator is willing to take chances with its customers to turn a quick profit. This is

the pattern of abusive behavior that has time and again in recent years required action by the Commission and/or Congress.²

In contrast, where the future of the service provider is dependent on a successful and continuing relationship with its customers, then abusive behavior is counter-productive. In today's competitive telecommunications environment -- which will be still more competitive in the future -- it is critical for an exchange carrier to retain and build its customer base. Providing further emphasis to this market imperative, formidable mechanisms are available to LEC customers for letting a LEC know it has disappointed them through federal and state regulatory commissions, a vast array of consumer or industry advocates, and state legislatures as well as Congress.

Exchange carriers such as GTE have had in place for years, and applied rigorously, policies and practices designed to assure ample protection of the customer's privacy interests. There is every indication that customers' privacy expectations are being met.³ Customers may have their telephone numbers and/or addresses excluded from telephone directories and/or the directory assistance data base. Further, GTE treats personal data obtained from customers as confidential; and, should a customer so request, GTE will apply to data obtained from that customer a still higher level of confidentiality. These commitments reflect how important it is in the marketplace that an exchange carrier possessing confidential data concerning its customers accommodate their needs and retain their confidence.

² See, for example, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992) ("D.92-90").

³ See Ameritech at 2-3.

GTE's long-standing policy seeks to maintain a fair balance between customers' privacy expectations and the need for a free flow of information over the public network. In recent years, GTE has become still more sensitive to privacy concerns and has applied increased attention to safeguarding customer privacy. In taking these actions, GTE is not alone. A soundly managed LEC seeks to earn the trust of its customers. It is a great irony that an industry segment -- exchange carriers -- that has an exemplary record of respecting privacy⁴ is bombarded with demands for ever-increasing regulatory constraints. Increasing the irony is that some of the parties making the demands themselves represent a far more serious risk to privacy.

This last point relates to a second risk factor in terms of privacy, *i.e.*, the sensitivity of the information involved. As mentioned *supra*, confidential customer information in the hands of GTE is subject to restriction at the customer's option. As to the primary information about customers (name, address, telephone number), this option is broadly exercised -- although the great majority of residential customers, and nearly all business customers, choose to make this data universally available through telephone directories and/or directory assistance data bases.

In fact, a wide variety of non-LEC service providers that are not subject to FCC-imposed restrictions accumulate more in the way of sensitive data than an exchange

⁴ BellSouth at 10: "BellSouth and other LECs have a longstanding track record of dignifying customer expectations of privacy or confidentiality of their telephone records." *See also* U S WEST at 3-4.

carrier.⁵ For example, CompuServe (at 2) describes itself in these terms:

CompuServe's online consumer information services include everything from educational and instructional to entertainment, home management and financial services. These services allow consumers to bank, shop, and make travel reservations from home; to access up-to-the minute news, weather, financial, and sports information; to utilize a large number of instructional, educational, medical, scientific and other reference databases; to participate interactively in special interest forums and electronic bulletin boards on almost every conceivable topic; and to send and receive electronic mail.

Typically, for the exchange carrier involved in providing communications for CompuServe's customers by connecting a calling customer to the Point of Presence ("POP") of an Interexchange Carrier ("IXC"), all the LEC knows as network service provider is the bare fact of the customer's connection to certain telephone numbers for certain durations. In contrast, CompuServe may know or be able to discover within its own system the nature of the customer's entertainment, the management of the customer's home, the banking and purchase transactions of the customer, the places to which the customer plans to travel, the use the customer makes of data bases, the customer's participation in special interest forums or electronic bulletin boards, and the customer's pattern of usage of electronic mail. CompuServe's access to sensitive customer data is far greater than an exchange carrier's access.

And yet CompuServe is subject to no privacy-related constraints imposed by the FCC. To cap it off, CompuServe insists on even more burdensome CPNI rules for

⁵ USTA at 3: "Customers may be more concerned when non-telephone companies fail to meet their privacy expectations because those companies may hold data that is more sensitive than information about customers' use of local exchange services."

exchange carriers and has the sheer gall to cite (at its SUMMARY) the supposed risk that LECs will "compromise customer privacy." The theme of CompuServe and other such parties is restrictions on exchange carriers ostensibly for the sake of privacy should be heaped up endlessly while such entities as CompuServe -- having access to more sensitive data, and being part of an industry segment with a history of abusive behavior that has required repeated efforts by Congress and the Commission to protect the citizens -- should be completely free to violate the very restrictions they insist should apply to LECs.

A hypothetical example will further illustrate this point. Suppose in the course of a month a customer makes ten calls to a provider of 900 service. Again, the information in the hands of the exchange carrier is typically limited to the number called and the call duration. The 900 service provider would be in possession of far more sensitive information concerning the nature of the service provided and the customer's use of that service.

Restricting only one of the parties possessing data -- and indeed that party (the LEC) possessing only less sensitive data -- destroys any claim that the regulation would be effective. Further, in the foregoing illustration, since the data reaches the 900 service provider through a direct business relationship with its customers, indirect restrictions would not be effective. Thus, restricting 900 service providers through restrictions imposed on exchange carriers is not a workable solution.

2. Protection of privacy is at best an incidental purpose of the CPNI rules.

GTE urges the Commission to recognize explicitly that protecting privacy is no more than an incidental purpose of the CPNI rules.⁶ Indeed, to some degree the CPNI rules operate against end-user privacy by requiring the release of confidential data outside the telephone company. GTE suggests the Commission should recognize that the real purpose and effect of the CPNI rules is to address competitive concerns. Should the FCC contemplate creating rules designed to provide effective privacy protection, the instant proceedings are not appropriate vehicles because they are too narrowly focused, *i.e.*, only on rules affecting exchange carriers. To create rules that would furnish effective privacy protection, the Commission would have to initiate a proceeding looking broadly at the privacy question in terms of the sensitivity of data in the telecommunications stream and effective means of protecting sensitive data **regardless of the entity involved.**⁷ Properly carried out, this would provide a coherent and reasonably complete plan to safeguard privacy focused on the data the end user considers most sensitive.⁸

⁶ USTA at 2: "It is clear ... that the [CPNI] rules were not designed [to protect privacy]. Privacy is mentioned only in passing in the relevant FCC orders." *See also* Bell Atlantic at 6.

⁷ *See* NARUC at 4-5 arguing for application of restrictions to any party in possession of CPNI.

⁸ With regard to possible merger activity, GTE suggests if such matters require special privacy protection, there is no logical reason why such protections should be confined to exchange carriers. The AT&T-McCaw and MCI-Nextel mergers would raise at least as many privacy issues as a merger involving LEC(s). Again, measures to protect privacy to be effective must not be confined to exchange carriers.

GTE does not recommend the initiation of such a proceeding at this time because: (i) no need for it has been demonstrated; and (ii) it would be wise to await the outcome of the pending privacy investigation by National Telecommunications and Information Administration ("NTIA")⁹ before the FCC commences a parallel effort.

In summary: Changes in the CPNI rules are not justified by privacy concerns.

III. THERE IS NO JUSTIFICATION FOR DISRUPTING AN EXCHANGE CARRIER'S RELATIONSHIP WITH ITS CUSTOMERS.

As pointed out by Ameritech (at 2-3), the Commission has recently addressed the matter of a company's relationship with its customers in the context of the Telephone Consumer Protection Act ("TCPA").¹⁰ Far from imposing a rigid and mindless rule, the FCC has defined an "established business relationship" broadly,¹¹ and made it clear that "a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests [since] such a solicitation can be deemed to be invited or permitted by a subscriber in light of the business relationship."¹² Thus, in refusing to bar autodialer solicitations or to require

⁹ NTIA, Inquiry on Privacy Relating to Private Sector Use of Telecommunications-Related Personal Information, Docket No. 940104-4004.

¹⁰ D.92-90, 7 FCC Rcd at 8769-71. See 47 U.S.C. Section 227.

¹¹ "[T]he rules define 'established business relationship' as a prior or existing relationship formed by a voluntary two-way communication between the caller and the called party, which relationship has not been previously terminated by either party. The relationship may be formed with or without an exchange of consideration on the basis of an inquiry, application, purchase or transaction by the residential telephone subscriber regarding products or services offered by the telemarketer." D.92-90, 7 FCC Rcd at 8771.

¹² *Id.* at 8770.

actual consent to prerecorded message calls, the Commission said: "[T]he legislative history indicates that the TCPA does not intend to unduly interfere with ongoing business relationships."¹³

Here, it is not a question of anything so intrusive as autodialer telemarketing with prerecorded messages. It is simply a question of allowing the exchange carrier to be in normal contact with its own customers. Citing bogus "privacy" concerns, a number of parties would deny LECs this basic right.

These parties would also deny the customer the option of receiving telephone calls in normal course from the serving exchange carrier. There has been no trace of an outcry from customers demanding any such thing. An exchange carrier that bothered its customers with unwelcome solicitations would pay a price for such activity and quickly desist. But many parties -- ostensibly protecting the privacy of the LEC's customers -- would have the exchange carrier obliged to pester its customers with polls and waivers and surveys so long as these things serve the purposes of these parties. GTE's experience is that a high ratio of mailed items go into customers' trash-cans unread. Requiring express permission from customers means that those customers who throw away notices unread would be automatically cut off from access by the telephone company in normal course. Imposing such requirements would disrupt

¹³ *Id.* See also Rules and Policies Regarding Calling Number Identification Service -- Caller ID, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-281, FCC 94-59 (released March 29, 1994) at paragraph 58, where the FCC concluded "that an ANI services subscriber may use ANI to offer products or services to an established customer that are directly related to products or services previously provided by the ANI services subscriber to that customer." Footnote omitted.

LECs' relationships with their customers for reasons having nothing to do with customer privacy.

As discussed *supra*, Congress as well as the Commission have recognized the importance of respecting a pre-existing customer relationship. Congress has similarly recognized this point in the Cable Act. While cable operators are prohibited from using the cable system "to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned,"¹⁴ the statute also provides: "A cable operator may use the cable system to collect such information in order to ... obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber...."¹⁵ Congress here was again recognizing the legitimacy of a company dealing with its own customers in providing its full range of services.

This has important consequences for the customer. It is not only convenient for customers to be able to reach GTE with regard to all of its services¹⁶; it is important to the customer to be able to hold GTE responsible for its full and complete performance. As "Chinese walls" are erected by governmental decree, the customer will be confused and frustrated by being required to deal with several different people and apparently fragmented responsibility. This would be a result directly contrary to the expectations, and demands, of customers.

¹⁴ 47 U.S.C. Section 551(b)(1).

¹⁵ 47 U.S.C. Section 551(b)(2)(A).

¹⁶ See Ameritech at 4-5 indicating the present CPNI rules are a major inconvenience for customers.

This is an area of telephone company operations to which GTE has dedicated a great deal of attention over recent years. Specifically, (i) GTE made a careful evaluation of customer needs, including numerous interviews with customers aimed at discovering how they prefer to interact with GTE; and (ii) GTE evaluated the methods of firms recognized as leaders in customer service activities. A conclusion that emerged from both of these evaluations is that there is very strong customer preference for dealing with a single representative of a company and very strong customer resistance to being transferred among multiple representatives of a company.¹⁷

Taking this into account, GTE has implemented extensive restructuring throughout its system designed to assure direct and unified accountability to the customer in the form of a single person who is able to take orders and assure timely delivery. This means, in short, meeting all the customer's needs in a way that is convenient to the customer, efficient and accurate. Implementation of these measures has improved the quality of service while providing economies in that, instead of several telephone calls or items of correspondence, a single step will typically meet the customer's needs.

Parties that neither know nor care about the expressed preferences of GTE's customers, or the complexities of improving efficiency, would have the FCC interfere with GTE's operational improvements by requiring different persons to deal with the customer for each and every service. To the extent these parties see themselves as rivals or competitors of exchange carriers, increased LEC inefficiency may be a

¹⁷ Attachment 1 to these Comments entitled "The Voice of GTE's Customers" provides evidence supporting this description of customer preferences.

desirable outcome. But there is no logical justification for the Commission to prevent GTE from improving its operational efficiency, much less to impose still more in the way of inefficiencies, particularly when this action would override the clearly expressed preferences of GTE's customers. This is most emphatically true when the supposed justification, customer privacy, is so transparently no more than a pretext.

In summary: Current CPNI rules already disrupt the relationship of subject exchange carriers with their customers. There is no justification for still more disruption. The Commission should reject arguments for restrictions that would interfere with an exchange carrier's relationship with its customers.

IV. THE CPNI RULES SHOULD NOT BE EXTENDED TO CPE.

Independent Data Communications Manufacturers Association, Inc. ("IDCMA") and North American Telecommunications Association ("NATA") argue that the CPNI rules should now be modified so they apply for the benefit of CPE vendors. In effect, they are asking for a reversal of the decision the FCC reached in 1987¹⁸ that only limited CPE-related CPNI requirements would apply to the BOCs.¹⁹

The Commission's carefully studied decision not to apply the full CPNI rules for the benefit of CPE vendors was based on the FCC's conclusion that "the CPE marketplace has evolved to a point that most purchasers are taking advantage of the robust competition that exists and no longer regard 'the telephone company' as the

¹⁸ Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, CC Docket No. 86-79 ("D.86-79"), Report and Order, 2 FCC Rcd 143 (1987), *reconsideration*, 3 FCC Rcd 22 (1988).

¹⁹ *Id.*, 2 FCC Rcd at 153.

only, or even the principal, source of CPE."²⁰ Now that the market share of such companies as GTE has shrunk to a very small percentage of the CPE market²¹, these parties would have the Commission reverse its ruling and burden exchange carriers with CPE-related CPNI rules.

And yet neither IDCMA nor NATA are able to support their demands by a single cited instance of abusive behavior regarding CPE on the part of GTE or any other exchange carrier. NATA (at 7-8) raises the specter of CPNI employed for purposes of "unhooking." But neither IDCMA nor NATA cites a single case in the entire nation of such a thing happening.

What gives these arguments an almost comic overtone is the dramatic reduction in LEC market share. Whatever unspecified nefarious activities exchange carriers are supposed to be engaged in, they are clearly not working. The Commission has rejected these hollow arguments time and again; in today's competitive climate, they take on an element of the absurd.

As suggested by Pacific Bell (at 7), the real CPNI/CPE question is whether, in view of the highly competitive market for CPE, there continues to be a need for even those restrictions that currently exist.

²⁰ *Id.*, 2 FCC Rcd at 153. See Section 64.702 of the Commission's Rules with Respect to Non-Dominant Resellers of Interexchange Services, DA 93-688, AT&T's Reply Comments filed August 3, 1993, at 2 where AT&T says the CPE market is "undeniably 'workably competitive.'"


²¹ GTE's share of the CPE market has declined precipitously. In 1990, GTE's share of the key system and PBX market in its operating territories was less than forty percent.

In summary: The Commission should once again reject the demands of CPE vendors for still more constraints on exchange carriers.

Respectfully submitted,

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Attachment 1

THE VOICE OF GTE'S CUSTOMERS

INTRODUCTION

In GTE's continuing effort to ensure the voice of the customer is included in its customer satisfaction measurement programs, qualitative research is periodically conducted to identify the key elements that customers indicate as critical to them when considering firms with which they want to do business.

BACKGROUND/METHODOLOGY

During March and April 1993, GTE conducted national focus groups with its customers to determine, among other things, what attributes customers discussed when defining excellent value. The study design ensured that customers did not know the identity of the firm sponsoring the research.

The focus group participants were all GTE customers and were segmented by residential and business. The sites chosen for the study were: Ontario and Santa Monica, California; Dallas, Texas; Ft Wayne, Indiana; Durham, North Carolina; and Tampa, Florida.

SINGLE POINT OF CONTACT versus FRAGMENTED RESPONSIBILITY

During the segment of the research that focused on customer service, several critical elements surfaced. One such element was "being easy to do business with." When asked for some examples of what customers meant by "being easy to do business with," the recurring theme was not being passed off to someone else to get service installed or repaired or to have questions answered. GTE's customers want to have a single point of contact or "One Touch."

The following are just a few customer comments relating to the topic of customer contact activities.

Customer quotes favoring a single point of contact:

"You don't have to talk to three or four different people to answer one question."

"You don't have to go and make lots of phone calls."

"He said, don't worry I'll take care of it." [Reference to not being passed on to another department.]

"Call one person, period. That's it, to take care of everything."

Customer quotes opposing multiple contact personnel:

"There is no central processing unit that handles everything."

"They tell you ... to call another number and then they tell you ... to call another number."

"To me if they could streamline the process. Where do I go to get what I want...."

"GTE on the other hand, [asks you] is this for equipment or lines?"

"They don't refer you out to someone else."

"You don't like dealing with an organization that you get the so called runaround because the person you're dealing with doesn't know the answer."

"I don't want to talk to a service rep who hands me to somebody else."

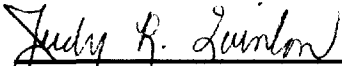
Customer quotes opposing fragmented responsibility:

"The telephone company is a little bit like the government. It's a bureaucracy and they've established the internal bureaucracies of the people who manage certain departments and title people by different titles and they become specialist and you call and ask for the type of service but Jane takes care of all the calls to the operator and Mary takes care of all the things with the pound sign. Nobody seems to know what anybody else is doing. Its a problem getting a response."

"...one thing that's always bothered me is like when you go in for some type of service there's all this red tape and all these rules it's like you're locked in."

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on the 19th day of May, 1994 to all parties of record:



Judy R. Quinlan